

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)	Docket No. 01-AFC-4
)	
Application for Certification for the East Altamont)	
Energy Center)	
_____)	

**APPLICANT'S COMMENTS
ON THE ERRATA TO THE
REVISED PRESIDING MEMBER'S PROPOSED DECISION**

July 3, 2003

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**APPLICANT'S COMMENTS
ON THE ERRATA TO THE
REVISED PRESIDING MEMBER'S PROPOSED DECISION**

Pursuant to the Committee Order for Filing Comments, dated June 30, 2003, the East Altamont Energy Center, LLC ("Applicant") submits these comments on the Errata to the Revised Presiding Members Proposed Decision ("RPMPD"), issued on June 16, 2003, in the areas of Air and Water Resources.

Our comments focus on three critical issues which require significant clarification or correction. Each of these issues is integral to the viability of the proposed project.

First, with respect to the proposed requirements in Condition AQ-SC5, we appreciate the Committee's time and patience in working through this issue. However, we are concerned that the proposed language in AQ-SC5 would undermine – in fact, nullify – the Air Quality Mitigation Agreement reached between the Applicant and the San Joaquin Valley APCD. While it may not be the Committee's intent, the proposed language would have the effect of forcing the Applicant to abandon the proposal crafted in consultation with the SJVUAPCD in favor of the certainty resulting from simply purchasing ERCs. Clearly, this unintended effect is contrary to the wishes of the Committee, the local community, the SJVUAPCD and the Applicant. In the comments below, we set forth two alternative approaches to resolve the serious conflict between the requirements in the errata to the RPMPD and those contained in the Air Quality Mitigation Agreement reached between the Applicant and the San Joaquin Valley APCD.

Second, we highlight several potential ambiguities in the most recent revisions to Condition Soils&Water 5. Because these ambiguities could be a cause of misinterpretation or serious confusion during the compliance process, we suggest clarifying language and seek to confirm our interpretation of this Condition. Due to the contentious nature of this issue, the

Applicant believes that it is critical that the Condition be as clear as possible. If the Committee believes that our interpretation of this Condition is incorrect, we respectfully request an opportunity to discuss this matter in a noticed Committee workshop before the RPMD is forwarded to the full Commission for a final decision.

Third, we request correction of a typographical error regarding the designation of the Project Owner.

I. Air Quality

The Applicant greatly appreciates the time and effort spent by the Committee in reviewing and addressing our concerns related to construction and operation requirements. The Committee's revisions reflect the great deal of thought and analysis that went into the preparation of those revisions.

With respect to the construction conditions, we accept and support the Committee's final language with one minor change that we believe to have been an oversight. In condition AQ-SC4, which establishes objectives for the dust control, we had requested that the Committee insert the word "dust" between "visible" and "emissions" and "visible" and "plume" at several locations within this condition and its associated verification. We believe that the Committee's omission of this word was an oversight, as the CEC Staff has agreed to that clarification in this (and in other) proceedings. If the Committee has a specific question regarding this change, we would be happy to address it at the appropriate time.

With respect to the proposed requirements in Condition AQ-SC5, we again appreciate the Committee's attention to detail, and its time and patience in working through this issue. However, we are concerned that the proposed language in AQ-SC5 would undermine – in fact, nullify – the Air Quality Mitigation Agreement reached between the Applicant and the San Joaquin Valley APCD.

As the Committee is aware, even though the EAEC fully complied with the air quality requirements of the BAAQMD, the Committee requested that the Applicant reach a second agreement with the SJVUAPCD to address what some have argued are the “cumulative impacts” that the SJVUAPCD had identified.¹ We are pleased that we were successful in doing that. However, the Committee’s revised language in AQ-SC5 would rewrite or nullify the agreements reached with the SJVUAPCD. We recognize the Committee’s authority to make such a determination; however, this places the project in an untenable position because the requirements in the errata to the RPMPD are substantively different from the APCD’s. The errata would place the project owner in exactly the position we were trying to avoid – complying with two different sets of air quality requirements.

The substantive difference between the Committee and APCD requirements is that the APCD intended to use the mitigation fee to achieve reductions of 66.8 tons/year of NO_x emissions in the Northern San Joaquin Valley. Under that agreement, as evidenced by the underlying calculations, these reductions are intended to have a duration that is based on the specific measures implemented. For example, if all of the funds were directed to the replacement of agricultural irrigation pumps, these funds would be intended to achieve a NO_x reduction of 66.8 tons per year for as long as the new, low emitting pumps were in operation. In this example, that might be 7-10 years. However, the AQMA does not envision that the project owner would

¹ It is important to note the agreement with the SJVUAPCD is not required under CEQA to mitigate potentially significant impacts. Indeed, CEQA, other state law, and federal law all dictate that the mitigation measures provided through the BAAQMD are sufficient to ensure that potentially significant impacts are reduced to a level of less than significant and to confirm compliance with all applicable laws, ordinances, regulations, and standards. As the Applicant has stressed, no state or federal law exists that would require the Applicant to be exposed to regulation by two air districts simply because the project is located on the jurisdictional borders of two districts. Accordingly, there is no legal requirement for the Applicant to enter into the AQMA or any other voluntary agreement with the SJVUAPCD. Notwithstanding this lack of legal obligation, the applicant has, based on its own business practices and the clear request from the Committee, entered into such an agreement. Accordingly, while the Applicant has agreed to provide additional benefits to resolve this issue for the sake of comity, the applicant has absolutely no legal obligation to provide any additional mitigation. Accordingly, since no additional such mitigation is required by law, the claims by certain parties that the benefits conferred are somehow inadequate are not supported by the facts or the law.

be required to continue to purchase new, low-emitting irrigation pumps every 7-10 years. While the pumps that would be replaced at that future date will certainly be low-emitting (due to current and future state and federal requirements), there was no expectation in the AQMA that the project owner would be involved in ensuring those future reductions or covering their cost.

In contrast, the proposed condition in the errata would appear to place such a continuing requirement on the project owner. This requirement cannot be practically achieved; if the project owner is required to demonstrate 66.8 tons/year of reductions from irrigation pump replacements during a second iteration 7-10 years in the future, the calculation of those reductions would certainly be based on reductions as compared with the engines that would otherwise be available – i.e., we would have to show a 66.8 ton/year reduction beyond the then-current generation of low-emitting pumps. Even if the Committee were to clarify that the reductions were to be calculated as compared with the emissions from currently installed engines, such a continuing requirement would increase the cost of the program by at least a factor of 2-3, well beyond the amount envisioned by the APCD and the Applicant.

Under such a continuing obligation, the project owner would see no practical alternative but to purchase and set aside or surrender emission reduction credits sufficient to satisfy the Committee's requirements. The purchase and surrender of ERCs to satisfy this requirement is not consistent with the desires of either the San Joaquin APCD or the community, and represents a questionable public policy.² However, a continuing requirement for the expected 30 year life of the project would leave the project owner with no practical alternative to purchasing ERCs.

² The emission offset program was created 25 years ago to create a mechanism through which the growth in emissions of new sources could be managed through an accounting program that ensured that for every pound of new emissions created, slightly more than one pound would be reduced. The EAEC project has already satisfied that program's requirements through the BAAQMD permit. The use of the same emission reduction credit program to provide what Staff characterizes as additional "CEQA" mitigation – although a common occurrence in CEC siting cases – runs counter to the public policy objectives of the offset program by depleting the reservoir of emission reduction credits at a rate much faster than the increase in emissions from new sources. As a result, this practice is

We envision two possible explanations for the revisions to AQ-SC5 in the errata to the RPMPD:

1. The Committee may have intended to endorse the AQMA between the Applicant and the District, and wanted to ensure that the funds were intended to achieve reductions of 66.8 tons/year (and not a one-time reduction of 66.8 tons), without creating a continuing obligation for Calpine for 30 years. If this interpretation is correct, we have no substantive objections, and we have enclosed proposed revisions to the errata's language which would achieve this objective. This language is attached as Alternative A.
2. The Committee may have disagreed, in principle, with the AQMA and intended to create a different, *separate* requirement, even though the AQMA fully satisfied the objectives clearly set forth by the Committee early in this proceeding. To address this possible event, we have proposed a second, alternative set of revisions to the Committee's language (Alternative B) which would do the following:
 - Delete all references to the AQMA, so as to enable the Applicant to negotiate a different agreement with the APCD that would be more similar to the new requirements.
 - Indicate that while the target reductions are 66.8 tons/year of NOx for the life of the project, this target is calculated on the basis of a requirement of 33.4 tons/year and a safety factor of two.
 - Indicate that in the annual reports to the Commission regarding the program, Calpine is to report the project's annual NOx emissions and, to the extent these emissions are below the maximum allowable NOx emission rate of 263 tons per year, the requirement for that

hastening the day when the offset program will no longer be functional, and will have to be replaced. This is particularly ironic given the disdain with which the CEC Staff places most air district regulatory programs – including the offset program.

year is reduced at the rate of 2 tons/year reduced for every one 1 ton/year that actual annual NOx emissions are below the maximum annual emission rate.

- Require that Calpine demonstrate the provision of the 66.8 tons/year of NOx prior to the start of each year, rather than prior to the start of construction.
- Indicate that the requirement ends if Calpine amends the project's emission limits for NOx to allow not more than 229.6 tons/year (263 – 33.4) to be emitted.

The purpose of these changes is that if the Committee wishes to see benefits provided for the life of the project, with an annual tracking system, the requirements should track the project's actual emissions. This represents good public policy as well, since it would encourage Calpine to seek ways to minimize project NOx emissions on-site – the best and most cost-effective option. Such a tracking system is not consistent with a requirement to provide all of the reductions (66.8 tons/year for the expected 30 year life of the project) prior to the commencement of construction, which is why we propose to require that the reductions be provided in advance of each year's operations. Finally, since there are likely to be advances in emission control technologies over the life of the project, we request that the program be terminated if the project's NOx emission limits are reduced to a level which would eliminate the calculated requirement.

If the latter objective (replacing the AQMA with a new and different requirement) is, in fact, the Committee's desire, we have two additional comments.

First, if the Commission will not accept the determinations of either air district with interests in this project, the Commission should direct Staff to develop clear, unambiguous criteria for determining when Staff declares that such impacts are significant. Most of California's major air pollution control districts have developed such criteria, and, if – as here –

the Commission finds that these criteria are unacceptable, there is no reason why such criteria cannot be established by the CEC on a statewide basis. This would ensure that all project applicants are treated fairly and consistently – something that is not the case today.

Second, the Commission should establish the same type of requirement – a continuing obligation to track and provide air quality benefits for the life of the project – for all projects with pending applications where additional air quality improvements are required. This would specifically include the Tesla Power project and the Palomar project. In both of these cases, the CEC Staff has recommended additional mitigation, beyond the requirements of local air districts. If the Commission allows some projects to rely upon informal, less stringent agreements with Staff, while other projects are required to maintain rigorous tracking programs for the remainder of the project's life, an inequitable situation will arise with the Commission conferring competitive benefits on some projects to the detriment of others. The Staff's notion that the quality of air in a region dictates the stringency with which mitigation programs are to be monitored is fundamentally flawed. Air quality in an area is a determinant of whether additional mitigation is required and, if so, the quantity of mitigation required. It should not play a role in establishing mitigation monitoring and reporting requirements.

In summary, we greatly appreciate the attention to detail by the Committee in the areas of construction and project operating requirements. The time spent by the Committee in reviewing and addressing these issues is well demonstrated in the level of care that the Committee used in revising these conditions. We hope that the Committee accepts these comments in the spirit in which they are provided – as a genuine effort to help the Committee improve the decision and reach a fair and equitable resolution of these issues.

Alternative A to Condition AQ-SC5
Clarification of Requirements with Respect to EAEC/SJVUAPCD Air Quality Mitigation
Agreement

(changes are shown relative to Committee's June 13, 2003 errata)

AQ-SC5 In order to mitigate cumulative impacts to air quality in the Northern San Joaquin Valley Air Basin in general, and near the project in particular, the project owner shall fund a program designed to achieve reductions in emissions of ozone and PM10 precursors.

Through a mitigation agreement with the SJVUAPCD, the project owner shall provide emissions reductions locally equivalent to 66.8 tons/year of NOx, as determined by the SJVUAPCD through the economic life of the project. These emission reductions may be generated through a combination of mobile and/or stationary source emission reduction programs with best efforts made to achieve the reductions in the northern San Joaquin Valley. Emission reductions will be obtained through:

1. Implementation of measures identified in the Air Quality Mitigation Measure Plan (AQMP), as identified in paragraph 3 of the AQMA between Applicant and the SJVUAPCD. Pursuant to paragraphs 5 and 12 of the AQMA, the AQMA is incorporated within this Condition and shall be enforceable against any EAEC successor project owners.
2. Providing supplemental funds to the SJVUAPCD to implement additional measures identified in the AQMP as may be necessary to achieve the emissions reduction identified above.
3. Applicant may apply in future years any mitigation created in excess of 66.8 tons of NOx. Applicant may make up any mitigation shortfall in the year immediately following the shortfall.
4. Applicant may opt to provide ERCs in lieu of additional funding beyond the \$1,002,480 required under the AQMA to achieve the emissions reduction identified above in the event that the programs funded by the AQMA fall short of these goals.
5. If it proves not feasible to obtain the reductions in the northern San Joaquin Valley, the reductions shall be obtained in other parts of the SJVUAPCD. The annual target of 66.8 tons/year of NOx reductions, as determined by the SJVUAPCD, shall be obtained prior to the start by the end of the first year of commercial operation.
6. Under the provisions of paragraph 4 of the AQMA, prior to the commencement of construction, the project owner shall pay to the SJVUAPCD the sum of \$1,002,480, which funds shall be deposited by the SJVUAPCD into an account dedicated to the implementation of emission reduction measures designed to mitigate the impacts of the EAEC project within the San Joaquin Valley Air Basin. The SJVUAPCD shall expend the funds consistent with the AQMP (paragraph 31), after consultation with the CPM upon licensing of the EAEC. The AQMP shall be formulated in a manner designed to maximize the emission reductions achieved through such expenditures, and shall give preference to cost-effective measures, which reduce NOx emissions in or near the city of Tracy, San Joaquin County, and the Northern Region of the San Joaquin Valley Air Basin.

Verifications:

1. An AQMP shall be submitted to and approved by the CPM prior to construction of the EAEC. At any time during implementation of the AQMP, the SJVUAPCD may request that the CPM concur with expenditures for measures not included in the approved EAEC AQMP. Such request(s) shall be accompanied by:
 - a description of the additional emission reduction measures;
 - their anticipated costs and emission reductions;
 - supplemental documentation containing a level of detail comparable to that contained in the original and approved EAEC AQMP, which was submitted and approved pursuant to this condition.
2. The project owner, annually, shall provide to the CPM a report containing information detailing:
 - the purchase of any additional ERCs in the Northern San Joaquin Region;
 - tons of emission reductions of NOx and VOC secured from the AQMP.The report shall contain, but not be limited to:
 - the total ERCs secured and surrendered,
 - any shortfall (or excess) of reductions from the ~~annual~~ target of 66.8 tons/year of NOx as calculated by the SJVUAPCD, and
 - the status of any supplemental CEC-approved emission reduction programs designed to achieve emissions reductions equivalent to 66.8 tpy of NOx and/or VOC, as calculated by the SJVUAPCD, combined to benefit the Air Quality in the Tracy/Livermore region.
3. At least 10 days prior to the commencement of construction, the project owner shall submit to the CPM evidence of payment of the AQMF under the AQMA to the SJVUAPCD. Not more than 60 days after the end of each calendar year, commencing with the calendar year in which the AQMF payment is made, EAEC shall, with the endorsement of SJVUAPCD, submit to the CPM a report containing the following information:
 - List of all projects funded through the EAEC AQMA's air quality benefit program (AQB) during the prior calendar year;
 - Incentive payments and/or costs for each project funded during the prior calendar year;
 - Estimated annual emission reductions for each project funded during the prior calendar year;
 - Estimated cumulative annual emission reductions for all projects funded through the end of the prior calendar year.Such reports shall continue to be filed at the end of each calendar year, with the last report due after the end of the calendar year in which the project permanently ceases to operate or sufficient ERC's have been tendered to result in 66.8 tons/year of NOx as calculated by the SJVUAPCD.
~~through the remaining operational life of the project~~

Alternative B to Condition AQ-SC5
New CEC Requirements

(changes are shown relative to Committee's June 13, 2003 errata)

AQ-SC5 In order to mitigate cumulative impacts to air quality in the Northern San Joaquin Valley Air Basin in general, and near the project in particular, the project owner shall fund a program designed to achieve reductions in emissions of ozone and PM10 precursors. The project owner shall provide emissions reductions locally equivalent to 66.8 tons/year of NOx through the economic life of the project. The 66.8 ton/year requirement is based on a calculated cumulative impact of 33.4 tons/year and a safety factor of 2.0. These emission reductions may be generated through a combination of on-site emission reductions, and mobile and/or stationary source emission reduction programs, with best efforts made to achieve the reductions in the northern San Joaquin Valley. Emission reductions will be obtained through one or more of the following:

1. Implementation of measures identified in the Air Quality Mitigation Measure Plan (AQMP) required by this condition, as identified in paragraph 3 of the AQMA between Applicant and the SJVUAPCD. Pursuant to paragraphs 5 and 12 of the AQMA, the AQMA is incorporated within this Condition and shall be enforceable against any EAEC successor project owners.
2. Providing ~~supplemental~~ funds to the SJVUAPCD to implement ~~additional~~ measures identified in the AQMP as may be necessary to achieve the emissions reductions identified above.
3. Reducing project emissions on an on-going basis through measures of the Applicant's choosing, as evidenced by the continuous emissions monitoring system required by Condition AQ-39. Reductions in project emissions below 263 tons/year shall be credited as mitigation at the rate of 2.0 tons/year of mitigation for every 1.0 ton/year that project emissions monitored pursuant to Condition AQ-39 are less than 263 tons/year.
- ~~3.4.~~ Applicant may apply in future years any mitigation created in excess of 66.8 tons/year of NOx. Applicant may make up any mitigation shortfall in the year immediately following the shortfall.
- ~~4.5.~~ Applicant may opt to provide ERCs ~~in lieu of additional funding beyond the \$1,002,480 required under the AQMA~~ to achieve the emissions reduction identified above ~~in the event that the programs funded by the AQMA fall short of these goals.~~ Any ERCs surrendered pursuant to this condition shall be deemed to have a duration of the operational life of the project. Any ERCs which are leased or dedicated for a period of time less than the operational life of the project shall be credited as mitigation only for those years covered by the lease or dedication.
- ~~5.6.~~ If it proves not feasible to obtain the reductions in the northern San Joaquin Valley, the reductions shall be obtained in other parts of the SJVUAPCD.
7. The target of 66.8 tons/year of NOx shall be obtained prior to the start of each calendar year of operation.
- ~~6.8.~~ This supplemental mitigation requirement shall be deemed satisfied upon amendment of Condition AQ-35 to limit NOx emissions to not more than 229.6 tons/year. Under the

~~provisions of paragraph 4 of the AQMA, prior to the commencement of construction, the project owner shall pay to the SJVUAPCD the sum of \$1,002,480, which funds shall be deposited by the SJVUAPCD into an account dedicated to the implementation of emission reduction measures designed to mitigate the impacts of the EAEC project within the San Joaquin Valley Air Basin. The SJVUAPCD shall expend the funds consistent with the AQMP (paragraph 3), after consultation with the CPM upon licensing of the EAEC. The AQMP shall be formulated in a manner designed to maximize the emission reductions achieved through such expenditures, and shall give preference to cost effective measures, which reduce emissions in or near the city of Tracy, San Joaquin County, and the Northern Region of the San Joaquin Valley Air Basin.~~

Verifications:

1. An AQMP shall be submitted to and approved by the CPM prior to construction of the EAEC. At any time during implementation of the AQMP, the ~~SJVUAPCD~~ EAEC may request that the CPM concur with expenditures for measures not included in the approved EAEC AQMP. Such request(s) shall be accompanied by:
 - a description of the additional emission reduction measures;
 - their anticipated costs and emission reductions;
 - supplemental documentation containing a level of detail comparable to that contained in the original and approved EAEC AQMP, which was submitted and approved pursuant to this condition.
2. Not more than 60 days after the end of each calendar year, commencing with the calendar year in which the first mitigation reductions are achieved, The project owner, annually, EAEC shall provide to the CPM a report containing information detailing:
 - actual NOx emissions from the facility for the preceding calendar year;
 - expected NOx emissions for the current calendar year
 - the purchase of any additional ERCs in the Northern San Joaquin Region;
 - tons of emission reductions of NOx and VOC secured from the AQMP.The report shall contain, but not be limited to:
 - the total ERCs secured and surrendered,
 - any shortfall (or excess) of reductions from the ~~annual~~ target of 66.8 tons/year of NOx, and
 - the status of any supplemental CEC-approved emission reduction programs designed to achieve emissions reductions equivalent to 66.8 tpy of NOx and/or VOC, combined to benefit the Air Quality in the Tracy/Livermore region.
3. ~~At least 10 days prior to the commencement of construction, the project owner shall submit to the CPM evidence of payment of the AQMF under the AQMA to the SJVUAPCD. Not more than 60 days after the end of each calendar year, commencing with the calendar year in which the AQMF payment is made, EAEC shall, with the endorsement of SJVUAPCD, submit to the CPM a report containing the following information:~~
 - List of all projects funded through the EAEC AQMA's air quality benefit program (AQB) during the prior calendar year;
 - Incentive payments and/or costs for each project funded during the prior calendar year;

- Estimated annual emission reductions for each project funded during the prior calendar year;
- Estimated cumulative annual emission reductions for all projects funded through the end of the prior calendar year.

Such reports shall continue to be filed at the end of each calendar year, with the last report due after the end of the calendar year in which the project permanently ceases to operate, ~~or~~ sufficient ERC's have been tendered to result in 66.8 tons/year of NOx through the remaining operational life of the project, or Condition AQ-35 has been amended to limit project NOx emissions to not more than 229.6 tons/year.

II. Water Resources

The Errata to the RPMPD contains a revision to Soils&Water 5. While the Applicant does not propose any further substantive revisions to this Condition, we are concerned that this new language, which was not discussed in earlier hearings or Committee conferences, may contain potential ambiguities which could be a cause of misinterpretation or confusion during the compliance process. Therefore, we would like to take this opportunity to suggest clarifying language and to confirm our interpretation of this Condition so as to avoid any possible misunderstanding between the Project Owner and the Commission during the post-certification phase of the project. If the Committee believes that our interpretation is incorrect, we respectfully request an opportunity to discuss this matter in a noticed workshop before the RPMD is forwarded to the full Commission for a final decision.

We have set forth below, line-by-line excerpts from Soils&Water 5, followed by succinct statements of our understanding of the quoted language. The Applicant respectfully requests confirmation from the Committee, either through a further errata to the PMPD or in a noticed Committee workshop, that our understanding of the terms and conditions of Soils&Water 5 is correct.

A. “Prior to plant operation, a pipeline capable of conveying 5,900 gallons per minute of recycled water from MHCS D’s treatment facilities to EAEC shall be built.”

- We understand that the pipeline will be designed in the same manner as all other project facilities – based on detailed engineering plans by registered engineers employed by the entity that will be responsible for construction and operation of the pipeline.

- The Commission intends that the actual diameter of the pipe shall be sufficient to convey 5,900 gallons per minute. The actual diameter will be determined by registered engineers when the pipeline is actually designed.
- If the pipeline is constructed by the Applicant, the plans will be reviewed and approved by the CBO. If the pipeline is constructed by a public agency, the plans will be reviewed and approved in the same manner as other facilities constructed by such agency.

B. “Prior to the start of project operation, the project owner shall submit a formal request to BBID or MHCSO (or any other potential recycled water supplier) pursuant to Water Code section 13580.7 for recycled water to satisfy the cooling water needs of the project.”

- A requirement to build a pipeline to MHCSO is inconsistent with a requirement to submit a request for recycled water to any entity other than BBID or MHCSO. The Committee can reconcile this potential point of confusion by making two revisions. The Committee may revise this sentence to state:

“Prior to the start of project operation, the project owner shall submit a formal request pursuant to Water Code section 13580.7 for recycled water to satisfy the cooling water needs of the project.”

Second, the Committee may revise the next sentence to read:

“Prior to plant operation, a pipeline capable of conveying 5,900 gallons per minute of recycled water to EAEC shall be built.”

C. “Prior to using fresh inland water, the project owner shall accept for use all the recycled water available to convey to the project at a cost comparable to or lower than the cost of fresh water conveyed to the project.”

- This condition does not state who will determine how much water is available to convey. It is our understanding that the quantity of water available to convey to the project or if the precise quantity is not known – the criteria for determining the

quantity of water to be conveyed - will be specified in a recycled water agreement between the project owner and the recycled water provider.

- In comparing the cost of recycled water to the cost of fresh water, it is our understanding that the costs will be compared on an equivalent basis. EAEC will take delivery of fresh water from BBID at the project site, as provided in the MOU between EAEC and BBID. BBID will be responsible for construction and operation of all upstream facilities, and the rate for fresh water will include all costs of conveyance and delivery to the project site. For the purpose of comparing the cost of recycled water to the cost of fresh water, it is our understanding that the cost of recycled water will be calculated including the cost of the recycled water and costs of conveyance and delivery to the project site.

D. Verification: No later than sixty (60) days prior to the start of plant operation, the project owner shall submit to the CPM evidence that the pipeline has been built and is capable of conveying no less than 5,900 gpm to EAEC

- It is our understanding that certification of the capacity of the pipeline by a California registered engineer will constitute the necessary evidence that the pipeline is capable of conveying 5,900 gpm to EAEC.

E. “No later than 60 days prior to the start of plant operation, the project owner shall submit to the CPM any contract entered into detailing the rate and conditions for recycled water service established pursuant to Water Code section 13580.7,....”

- Water Code section 13580.7 establishes a procedure for requesting recycled water service, but this section does not “establish” the rate and conditions for recycled water service. We understand this sentence to mean that “No later than 60 days prior to the start of plant operation, the project owner shall submit to the CPM a contract, if any,

detailing the rate and conditions for recycled water service, that has been entered into pursuant to Water Code section 13580.7...”

Finally, as a matter of clarification, we note that the errata has added footnote 122. This footnote was included the PMPD, deleted from the RPDPD and now restored by the errata. The footnote states: “**SOILS & WATER Table-13**, *infra*, shows an allocation whereby the remaining recycled water not distributed to the EAEC would be used within the MHCSD.” This is a slight, but significant misstatement. This footnote should read : “**SOILS & WATER Table-13**, *infra*, shows an allocation whereby the ~~remaining~~-recycled water not used within the MHCSD will be distributed to the EAEC, ~~would be used within the MHCSD.~~” As stated clearly in the Table, the Estimated Resulting Supply to EAEC is the Total Recycled Water Produced minus MHCSD’s Estimated Use. (Ex. 1, p. 5.14-13.)

III. Project Ownership

The Applicant requests that Certification of the East Altamont Energy Facility be issued to the “East Altamont Energy Center, LLC”. This designation of the Project Owner is consistent with the Applicant’s original description of the Project Owner in the AFC. (Ex. 1, p. 1-3)³

Accordingly, a typographical error in the designation of the Project Owner at page 1 of the RPMPD should be revised to read:

“This RPMPD contains the Committee’s determinations regarding the East Altamont Energy Center, LLC’s Calpine C* Corporation’s (Calpine or Applicant) Application for Certification (AFC) for the East Altamont Energy Center, ~~LLC~~ (EAEC)...”

³ At page 1-3 of the AFC, the Applicant described Project Ownership as follows:

“Calpine is the sponsor of the EAEC, which will be owned by the East Altamont Energy Center Limited Liability Company (EAEC LLC), a wholly owned subsidiary of Calpine Corporation.”

In addition, we request that the Commission Adoption Order also identify the Project Owner as the “East Altamont Energy Center, LLC”.

Respectfully submitted,

Dated: July 3, 2003

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____

Greggory L. Wheatland, Esq.
Jeffery D. Harris, Esq.

Attorneys for East Altamont Energy Center LLC

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)	
)	Docket No. 01-AFC-4
Application for Certification for the East Altamont)	
Energy Center (East Altamont))	
_____)	

PROOF OF SERVICE

I, Ron O'Connor, declare that on July 3, 2003, I deposited copies of the attached *Applicant's Comments On The Errata To The Revised Presiding Member's Proposed Decision* in the United States mail in Sacramento, California, with first-class postage thereon fully prepaid and addressed to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.

Ron O'Connor

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